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*Attorneys for Plaintiff*  
*Damarcus Stewart and the Class*

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

DAMARCUS STEWART, on behalf of  
himself and all others similarly situated,

Plaintiff,

v.

ACCURATE BACKGROUND, LLC,

Defendant.

Case No. 5:22-cv-01926-EJD

**PLAINTIFF'S SUPPLEMENTAL BRIEF**  
**REGARDING PRELIMINARY**  
**APPROVAL OF CLASS ACTION**  
**SETTLEMENT**

Date: November 9, 2023

Time: 9:00 a.m.

Place: Courtroom 4 – 5th Floor  
San Jose, California

22-cv-01926-EJD

1 Pursuant to the Court's direction during the October 11, 2023 hearing on the Motion for  
2 Preliminary Approval of Class Action Settlement (ECF 23), Plaintiff Damarcus Stewart hereby  
3 submits a Modification to the Settlement Agreement and revised notices to the proposed class for  
4 the Court's consideration.

5 The Parties have made two important changes to the settlement documentation in response  
6 to the Court's guidance. First, the modification to the Settlement Agreement removes the provision  
7 in section 8.1 prohibiting Defendant from objecting to or opposing Class Counsel's anticipated Fee  
8 Petition. Plaintiff continues to anticipate moving for \$184,000 in fees and litigation expenses as  
9 agreed by the Parties and provided for in the Agreement, and will seek this award based upon a  
10 lodestar calculation. As will be detailed further in the Fee Petition, a lodestar analysis is the  
11 appropriate method of determining a reasonable fee because the Fair Credit Reporting Act provides  
12 for statutory fee shifting, and because it serves the public policy of encouraging private enforcement  
13 of the substantive rights created by Congress. Manual for Complex Litigation § 24.13 (3d ed.  
14 1995); *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983); *Grove v. Wells Fargo Fin. California, Inc.*,  
15 606 F.3d 577, 582 (9th Cir. 2010); *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942  
16 (9th Cir. 2011) (courts have discretion to employ lodestar analysis in class actions). Lodestar  
17 analysis is appropriate even where it leads to a fee exceeding the typical 25% benchmark in this  
18 circuit. *See, e.g. Ramirez v. Trans Union, LLC*, 2022 WL 17722395, at \*7-11 (N.D. Cal. Dec. 15,  
19 2022) (applying lodestar analysis to approve fee in excess of benchmark in FCRA class action  
20 settlement).

21 Plaintiff believes that his Fee Petition will support his counsel's request for fees and costs as  
22 reasonable and appropriate in this case. At any rate, the recovery for the class is excellent for an  
23 FCRA statutory damages class actions, and any award of counsel fees was not negotiated to come  
24 out of, and will not come out of, the class's recovery; indeed, the class's recovery will not be  
25 impacted positively or negatively by any fee award approved by this Court, which Defendant has  
26 agreed to pay separately. *See* Settlement Agreement at 6.1(f).

1  
2 The Parties have also confirmed that no language prohibiting Defendant from objecting to  
3 or opposing the anticipated request for a service award for Plaintiff is present in the Settlement  
4 Agreement. *See* Section 8.3. Plaintiff continues to anticipate seeking a service award of \$10,000  
5 as provided for in the Settlement Agreement. As will be discussed more fully in connection with  
6 the motion for final approval, this amount is in line with other service awards approved in the context  
7 of FCRA class settlements in this District. *See, e.g., Der-Hacopian v. DarkTrace, Inc.*, 2020 WL  
8 7260054, at \*8 (N.D. Cal. Dec. 10, 2020) (approving \$15,000 service award for class representative  
9 in FCRA class action); *Watson v. Checkr, Inc.*, No. 3:19-cv-03396-EMC at ECF 80 (Dec. 15, 2021  
10 Order approving \$10,000 service award for class representative in FCRA class action). As discussed  
11 during the October 11 hearing, the Parties' separate resolution of Plaintiff's individual claims which  
12 were not pled on a class basis need not be specifically approved by the Court but has been disclosed  
13 out of an abundance of caution pursuant to Fed. R. Civ. P. 23(e). *See Patel v. Trans Union, LLC*,  
14 2018 WL 1258194, at \*1, \*7 (N.D. Cal. Mar. 11, 2018) (approving \$10,000 service award to class  
15 representative who separately settled individual claims in FCRA class action).

16 Second, in response to the Court's comments, the Parties have revised the proposed notices  
17 to the class, submitted herewith as Amended Exhibits B, C, and D attached to the Modification to  
18 the Settlement Agreement. Each notice has been revised to minimize technical or legal terminology  
19 and maximize the likelihood that consumers will make a claim. For ease of reference, Plaintiff  
20 attaches both "redlined" versions of these exhibits showing the changes made, and also final "clean"  
21 versions.

22 For the reasons set forth herein, as well as the reasons stated in the prior motion and on the  
23 record at the hearing, Plaintiff respectfully requests that the Court grant the motion and order that  
24 notice be sent consistent with the terms of the Settlement Agreement as modified by the Parties.  
25  
26  
27

1 Dated: October 30, 2023

**FRANCIS MAILMAN SOUMILAS, P.C.**

/s/ John Soumilas

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16 *Attorneys for Plaintiff*  
17 *Damarcus Stewart and the Class*

18 **CERTIFICATE OF SERVICE**

19 I hereby certify that a copy of the foregoing was filed electronically and served by U.S. Mail  
20 on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties  
21 by operation of the court's electronic filing system or by facsimile to anyone unable to accept  
22 electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing  
23 through the court's EM/ECF System.

24 Dated: October 30, 2023

/s/ John Soumilas  
25 John Soumilas  
26

27 22-cv-01926-EJD